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No. 92

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1929.

DEMETRIUS PHILIPPIDES,

Petitioner,

v.

BENJAMIN M. DAY, Commissioner of Immigration, Port of New York,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT.

PETITION FOR WRIT OF CERTIORARI AND BRIEF IN SUPPORT THEREOF.

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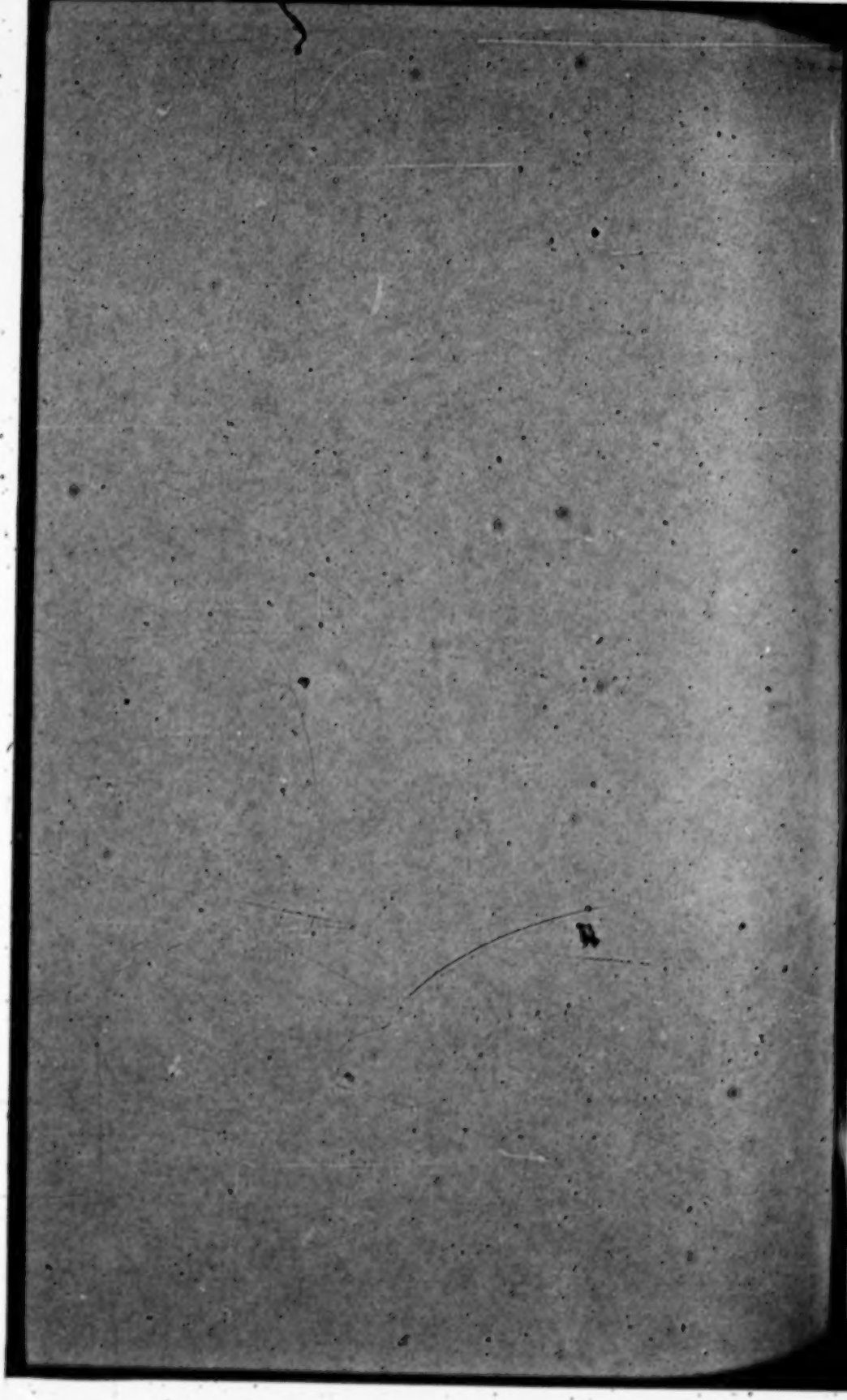

CONTENTS.

	PAGE
Petition for Writ of Certiorari	1-4
Questions Involved	2
Statement of the Case	2
Statute Involved	3
Reasons for Granting the Petition	3
Jurisdiction	4
Brief in Support of the Petition	5-22
POINT I. Petitioner, an alien seaman, unlawfully in the United States, was not taken into custody within the three year period of limitation specified in Section 34 of the Immigration Act of 1917, and, therefore, is exempt from deportation, since the provisions of this section are in effect a statute of limitations	5
POINT II. Section 34 of the Immigration Act of 1917 has not been repealed as the lower Court in effect held	6
Legislative History of the Act	9
(a) Congress utilized in the Act of 1924 a certain definite method of repeal and modification	15
(b) Section 34 of the Act of 1917 apparently applies only to alien seamen unlawfully in the United States	16
(c) The construction placed on Section 34 of the Immigration Act of 1917 by the Department of Labor is entitled to great weight	18
(d) The petitioner contends further that Section 34 of the Act of 1917 creates a special class in favor of seamen	21
POINT III. The law should not be left in its present state of confusion	22

Authorities Cited.

	PAGE
Church of the Holy Trinity vs. *United States*, 143 U. S. 457	8
Cellamare vs. *Benj. M. Day*, 32 Fed. (2) 623	18
Cumberland Telephone and Telegraph Co. vs. *City of Memphis*, 198 Fed. 955	18
Dunlay vs. *United States*, 173 U. S. 65	9
Ex Parte Bildf, 32 F. (2d) 894	18
First Nat'l Bank vs. *U. S.*, 206 Fed. 374, 379, and authorities cited	19
Guarantee Ins. Trust & S. D. Co. vs. *Gellers*, 123 U. S. 276	9
Nagle v. *Hansen*, 17 F. (2d) 557	3, 21
Prestons Browder, 1 Wheat. 115	9
U. S. ex rel. Rios vs. *Day*, 24 F. (2d) 654	3
U. S. ex rel. Piccolello vs. *Commissioner*, 36 F. (2d) 1022	3
U. S. ex rel. Danikas vs. *Day*, 20 F. (2d) 773 (C. C. A., Second Circuit)	5
U. S. ex rel. Filippini vs. *Day*, 18 F. (2d) 781, District Court, S. D.	6
United States vs. *St. Paul, Minn. and Manitoba R. Co.*, 247 U. S. 310	9
U. S. vs. *U. P. R. Co.*, 9 U. S. 72	9
Wisconsin R. Comm. vs. *C. B. & Q. R. Co.*, 257 U. S. 563	9

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No.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT AND BRIEF IN SUPPORT THEREOF.

To the Honorable the Chief Justice of the United States and the Associate Justices of the Supreme Court of the United States:

Your petitioner, DEMETRIUS PHILIPPIDUS, by THOS. A. KANE, his attorney, respectfully prays for a writ of certiorari to review the decree of the United States Circuit Court of Appeals for the Second Circuit, affirming the decree of the District Court of the United States for the Southern District of New York, dismissing a writ of *habeas corpus* obtained by petitioner on the ground that he was exempt from deportation by reason of the provisions of Section 34 of the Immigration Act of 1917.

Question Involved.

The instant case involves only one question of law:

Does Section 34 of the Immigration Act of 1917 bar the deportation of seamen who have unlawfully entered this country subsequent to 1924, and have remained here for a period of more than three years?

Statement of the Case.

Your petitioner was arrested in the City of Long Beach, Nassau County, New York, on December 18th, 1928, under a warrant of the Department of Labor, charging him with having been "found in the United States in violation of the Immigration Act of May 26, 1924," in that "he has remained in the United States for a longer time than permitted under the said act or regulations thereunder."

The evidence is undisputed that the petitioner is a native of Greece; that he shipped from Piraeus, Greece, on or about August 20th, 1925, on board the steamship "*Byron*", as a seaman, arriving at the Port of New York, September 18th, 1925; that he then and there *deserted* from the said ship, and was arrested on the warrant, as aforesaid, three years and three months later.

On April 15th, 1929, your petitioner sued out a writ of *habeas corpus* in the United States District Court for the Southern District of New York, contending that Section 34 of the Immigration Act of 1917 (Ch. 29, 39 Stat. 874) was in effect a statute of limitation which would bar his deportation after the passage of three years from the date of his entry.

The writ was dismissed on May 10th, 1929, upon the authority of *U. S. ex rel. Rios* vs. *Day*, 24 F. (2d) 654. An appeal from the order dismissing the writ was taken to the United States Circuit Court of Appeals for the Second Circuit (fols. 29-35, Transcript of Record). That court in a *per curiam* opinion affirmed the order of the District Court upon the sole authority of *U. S. ex rel. Piccolello* vs. *Commissioner*, 36 F. (2d) 1022, which in turn was decided solely upon the authority of the *Rios* case, *supra*.

Statute Involved.

Section 34 of the Immigration Action of 1917, provides:

> That any alien seaman who shall land in a port of the United States contrary to the provisions of this Act shall be deemed to be unlawfully in the United States, and shall, at any time, within three years thereafter, upon the warrant of the Secretary of Labor, be taken into custody and brought before a board of special inquiry for examination as to his qualification for admission to the United States, and if not admitted, said alien seaman shall be deported at the expense of the appropriation for this Act as provided in Section Twenty of this Act.

Reasons for Granting the Petition.

1. The decision of the Circuit Court of Appeals for the Second Circuit in this case is directly in conflict with the decision of the Circuit Court of Appeals for the Ninth Circuit in *Nagle* v. *Hansen*, 17 F. (2d) 557, in its interpretation of the section in question.

2. The apparent holding of the court that Section 34 of the Immigration Act of 1917 was repealed by the Immigration Act of 1924 is error, in view of the fact that this section appears in the later United States Code, Title 8, as part of Section 166, and, further, in view of the legislative history of the 1924 Act.

3. The question involved is of great importance not only because of the conflict in the present state of the law, but also because it is determinative of a large number of similar cases.

Jurisdiction.

That this court has power, in a case made final in the Circuit Court of Appeals, to issue a writ of certiorari to review a decree of that court on appeal from an order of the District Court dismissing a writ of *habeas corpus*.

That this court is given the right under the provisions of Section 240 (a) of the Judicial Code to review a decision of a Circuit Court of Appeals in conflict with the decision of another Circuit Court of Appeals on the same matter.

WHEREFORE, it is respectfully submitted that this petition for a writ of certiorari to review the decree of the Circuit Court of Appeals for the Second Circuit be granted.

Dated, New York, April 21, 1930.

THOS. A. KANE,
Attorney for Petitioner.

BRIEF IN SUPPORT OF THE PETITION.

POINT I.

Petitioner, an alien seaman, unlawfully in the United States, was not taken into custody within the three year period of limitation specified in Section 34 of the Immigration Act of 1917, and, therefore, is exempt from deportation, since the provisions of this section are in effect a statute of limitations.

Petitioner shipped from Piraeus, Greece, as a sailor aboard the S. S. *"Byron"* (Record, Fols. 58-59), and deserted his ship on September 10, 1925, immediately on its arrival in the Port of New York. He was taken into custody on December 18, 1928, over three years from the date of his unlawful entry.

In *U. S. ex rel. Danikas* vs. *Day,* 20 F. (2d) 773 (C. C. A., Second Circuit), referring to Section 34 of the Immigration Act of 1917, Judge Augustus N. Hand, rendering the decision, said:

> "This section naturally read, would seem to require the Secretary of Labor to arrest a seaman within three years after unlawfully landing in the country if he sought to deport him."

and further, in the same case, at page 736, he says:

> "Section 34 is much plainer, for it says nothing about the institution of proceedings but provides that 'any alien seaman who shall land in a port of the United States contrary to the provisions of this act . . . and shall at any time within three years thereafter, upon the warrant of the Secretary of Labor, be taken into custody . . . shall be deported.'

> This, by the plainest language, makes the taking *'into custody'* within three years from landing the critical factor."

The evidence in this case shows that the relator arrived at the Port of New York September 10th, 1925, and that he was apprehended on a warrant on December 18th, 1928, more than three years after his arrival.

It was held in *U. S. ex rel. Filippini* vs. *Day*, 18 F. (2d) 781, District Court, S. D., New York, December 3rd, 1926, that:

> "It is now the arrest which counts, and not the date of the issue of warrant or the time of the actual deportation."

The petitioner, therefore, submits that as the undisputed evidence shows that he was not taken into custody until more than three years after his arrival in the United States, the Secretary of Labor is prohibited by the limitation contained in Section 34 of the Act of 1917, from subjecting him to deportation proceedings at this time.

POINT II.

Section 34 of the Immigration Act of 1917 has not been repealed as the lower Court in effect held.

The undisputed evidence before the Immigration Inspector at Ellis Island, and the authorities cited in Point I hereof, effectually fixes the status of the relator as a seaman.

The Commissioner of Immigration, in support of his claim to his right to deport the petitioner, relies on the

alleged authority of Section 14 of the Immigration Act of 1924, which reads as follows:

> "Any alien, who at any time after entering the United States is found to have been at the time of entry not entitled under the Act to enter the United States, or to have remained therein for a longer period than permitted under the Act or regulations made thereunder, shall be taken into custody and deported in the same manner as provided for in Sections 19 and 20 of the Immigration Act of 1917. Provided, that the Secretary of Labor may, under such conditions and restrictions as to the support and care as he may deem necessary, permit permanently to remain in the United States any alien child who, when under 16 years of age, was heretofore temporarily admitted to the United States, and who is now within the United States and either of whose parents is a citizen of the United States (43 Stat. L. 162)."

It is the contention of the petitioner that Section 14 has no application to alien seaman.

A reading of the Immigration Act of 1924 shows that it makes specific reference to "Immigrants, quota and non-quota" (such term or terms being used in Sections 2 to 10 inclusive, and Sections 11, 12, 13, 16 and 18), to "aliens" (in Sections 3, 10, 14 and 15) and to "alien seaman" (in Sections 3 and 19) thereby creating by actual and specific reference three separate and distinct classes of individuals, viz.: (1) "immigrants", (2) "aliens", and (3) "alien seamen", and a certain, definite method of control and disposal is provided in the said Act for each class.

Inasmuch as the petitioner does not claim to come within the description of an "immigrant" no argument need be advanced as to the sections of the act relating to this class.

In connection with the second class, "aliens", the petitioner directs attention to the fact that the act provides for the entry of an alien (Sect. 3, Subdivs. 2, 3, 4 and 6), for the re-entry (Section 10), for deportation (Section 14), and for the maintenance of the exempt status provided in Section 3 (Section 15).

It would appear that Congress intended thereby to effect the control and regulation of "aliens" by said sections, and that these sections were directed especially to this particular class and to no other.

Apparently Congress thought it necessary to include in the Act of 1924, sections that would specifically refer to, and actually restrict, limit and control the third class "alien seaman", and it did so by Subdivision 5 of Section 3 (providing for the maintenance of the status of a bona fide seaman), Section 15 (providing for admission under a bond), Section 19 (prohibiting landing except in case of sickness or under Departmental regulations).

Section 19 even goes further and expressly gives to the Secretary of Labor the right and the power to prescribe rules and regulations "for the ultimate departure, removal, or deportation of such alien (alien seaman) from the United States."

The wording of this section appears to be perfectly clear, but in view of the conflicting opinion in connection with Section 14, and its alleged applicability to the third class, "alien seamen", notwithstanding the wording of Section 19, it appears that this is a situation where "reference may be had to the reports of legislative committees to ascertain the purpose of Congress in adopting the Statute" (*Church of the Holy Trinity* vs. *United States*, 143 U. S. 457).

While debates in Congress are not generally appropriate sources of information to discover the meaning of a statute

(*Dunlay* v. *United States*, 173 U. S. 65) the Supreme Court has considered explanatory statements made by members in charge of bills (*United States* vs. *St. Paul, Minn. and Manitoba R. Co.*, 247 U. S. 310; *Wisconsin R. Comm.* vs. *C. B. & Q. R. Co.*, 257 U. S. 563). The meaning of a statute is often to be sought from the surrounding circumstances and preceding history (*Guarantee Ins. Trust & S. D. Co.* vs. *Gellers*, 123 U. S. 276; *Prestons Browder*, 1 Wheat. 115; *U. S.* vs. *U. P. R. Co.*, 9, U. S. 72).

Legislative History of the Act.

Before the passage of the 1924 act numerous concerted efforts had been made in the House of Representatives to curtail the rights of seamen. As early as December 31st, 1923, the Department of Labor submitted a proposed immigration act to Congressman Albert Johnson, Chairman of the House Committee on Immigration (68th Congress, 1st Session, Hearings before House Committee on Immigration and Naturalization, Serial 1A, pp. 551-565). That bill contained the provisions embodied in the House proposals for landing cards and for the repeal not only of Section 32 of the Act of 1917, which was subsequently repealed, but of Sections 33 and 34 as well.

Both of these suggestions were embodied in the Johnson bill (H. R. 7995) as reported in House Report No. 350 (68th Congress, 1st Session, March 24, 1924, see pp. 19 ff.), which stated that:

> "Enforcement of the sections (Sec. 32, 33 and 34) of the immigration act of 1917 respecting alien seamen has been one of the most difficult tasks confronting the Immigration Service" (p. 19).

Both provisions remained in the bill through the conference report of May 8, 1924.[1] Not until May 15th does the conference bill (Conference Committee, print No. 1) apparently lose the provision directly repealing Section 34.

The Senate had opposed making any changes in the law in so far as it affected seamen. To quote the statement of Senator Lodge, made on April 18, 1924, "The House passed the bill with certain clauses in it relating to alien seamen. Those were stricken out by the Senate" (Congressional Record, 68th Congress, 1st Session, p. 6641).

It became necessary, as the two houses could not agree upon the question of alien seamen, to have a conference committee. Senator King sought strenuously to include in the Senate bill to be presented to the conference committee an amendment which contained an express provision for the deportation of seamen who remained more than sixty days unless they could show they had not abandoned their status or were admissible as immigrants (Sec. 17c to S. 2576, Congressional Record, 68th Congress, 1st Session, p. 6636). The amendment was debated and thereafter defeated (p. 6642), nor was there any suggestion that it was already embodied in the provisions of the bill. Senator Reed, the Chairman of the Senate Committee on Immigration, and later Chairman of the Conference Committee

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[1] 68th Congress, 1st Session, H. Report 688. The bill in its then form, less than three weeks before it was signed by the President, contained a Section 21 (d): "Section 32 of the Immigration Act of 1917 is repealed, but shall remain in force as to all vessels, their owners, agents, consignees, and masters, and as to all seamen, arriving in the United States prior to the enactment of this act. *Sections 33 and 34 of such act are repealed, to take effect after the expiration of four months after the enactment of this act, but the provisions of such Section 34 shall thereafter remain in force in the case of any alien seaman who has landed in a port of the United States before such repeal became effective.*" (Italics ours.)

(*idem*, p. 8235), suggested that the alien seamen question "ought to be dealt with in a separate bill" (*idem*, p. 6645). The whole matter was left as an open question for the Conference Committee. On May 15th the bill was agreed upon by both houses.

Senator Reed and Congressman Johnson explained what had been done about alien seamen to their respective houses. Both were agreed on two propositions with reference to the seamen's provisions:

(1) That they made it possible to keep sick seamen aboard the boats.

Senator Reed said:

> "All that we have done to the alien seaman law that is new has been to provide that after the inspection of alien seamen by the immigration authorities—and that inspection is required under the present law, and there is nothing new about that—the shipowner or master must keep on board any seaman who is indicated by the immigration inspector as unfit to land" (*idem*, p. 8577).

Congressman Johnson expressed the same thought thus:

> "In reference to the alien seamen's provisions, let me give you an exact statement of its purpose. It will work fairly for the United States and fairly for the sailors of the world. Seamen cannot now be held on board ship even long enough to give them the medical examination necessary for the protection of the United States. We correct that situation" (*idem*, p. 8651).

(2) That Section 19 applied only to excludable seamen such as those from the barred zone.

Senator Reed's views appear in a dialogue between himself and Mr. Fletcher:

"Mr. Fletcher: It seems to me there might be some question, by reason of the provisions of Section 19 and Section 3, as to whether there is any change in the matter of alien seamen. This is the provision in Section 3, that the word 'immigrant' does not include 'a bona fide alien seaman serving as such on a vessel arriving at a port of the United States.' He is not an immigrant. Then Section 19 provides that 'No alien seamen excluded from admission into the United States under the immigration laws,' can do so and so. If he is not an immigrant, is he excluded under the immigration law?

Mr. Reed of Pennsylvania: Yes, Mr. President. There are a great many people, several hundred million of them, who are not immigrants, but who are excluded from admission under the immigration laws. In other words, the immigration laws prescribe who shall be immigrants, and forbid the admission of millions of others, including all the Chinese, the Hindus, and the Malays.

Mr. Fletcher: Then the Senator's contention is that the able seamen on these vessels, although not immigrants, are excluded under our immigration laws?

Mr. Reed of Pennsylvania: Yes, under certain conditions they are.

Mr. Fletcher: Under certain conditions; and they are taken care of under Sections 19 and 20 of the committee report?

Mr. Reed of Pennsylvania: Precisely. They can be admitted temporarily under regulations, and that is a humane thing, because a Chinese ship coming into our ports with a Chinese crew should not be made a jail while it is in port" (idem, p. 8578).

Mr. Johnson states the proposition thus:

> "It is charged that Section 19 places the alien seamen under the immigration laws, and that to come ashore these seamen will have to comply with all the provisions of the immigration laws and be eligible to citizenship.
>
> There is nothing in that charge. The provision excluding from admission aliens ineligible to citizenship by its own terms does not apply to any alien who is not an immigrant as defined in Section 3. By the terms of Section 3, *bona fide* seamen are expressly declared not to be immigrants. Therefore seamen are not prevented from landing under the Japanese-Exclusion provision" (idem, p. 8651).

Mr. Johnson had previously—in answer to an inquiry as to the effect of Section 19—stated his views in these unmistakable terms:

> "I want to make it just as clear as I can that the provision the gentleman has just read only applies to those who cannot enter the United States, such as anarchists, and others who are in the excludable classes of Section 3 of the Act of 1917" (idem, p. 8638).

It is quite apparent that the Senate conferees had refused to agree to the bill unless the repeal of Section 34 of the 1917 Act was dropped. It was, as we have said, finally left out in the bill as it appears under date of May 15, 1924. Presumably the only effect of not repealing Section 34 was to retain the special status of seamen, including the three-year limitation in deportation proceedings of which the Circuit Court of Appeals has deprived them by its decision in the instant case. Throughout the extended debate on the seamen's provisions, as well as in the statements on

the conference report which Senator Reed and Congressman Johnson made, Section 14 of the 1924 Act was never once mentioned. There does not appear to be any doubt that no one regarded Section 14 as applicable to seamen or as having any effect on their situation.

Since the 1924 Immigration Act, Congressman Johnson has made a number of efforts to obtain the repeal of Section 34 upon the ground that it unwarrantedly makes a privileged class of seamen. Thus as recently as the first session of the 70th Congress the House Committee on Immigration and Naturalization reported favorably H. R. 10078, containing certain additional provisions for the deportation of aliens. In House Report No. 484, to accompany the bill, Congressman Johnson, writing for the committee, had this to say of Section 34 of the basic Act more than four years after the passage of the 1924 Act.

> "It will be noticed that this section (1) places a statute of limitation of three years from the time of landing upon the deportation of alien seamen, (2) affords a seaman a right to be heard before a board of special inquiry, and (3) apparently allows his admission unless he is at the time of such hearing a member of one of the excluded classes. No reason was apparent to your committee why a seaman should be granted any of these privileges, which are not granted to any other class of aliens, and it is therefore provided in the bill (subd. (b) of Sec. 7) that this section be repealed. The effect of this repeal will be to place the samen upon the same plane as any other alien so far as the procedure in arrest and deportation cases is concerned" (p. 13).

This was not an inadvertent statement, for he used substantially the same argument in his efforts to put through

the deportation bills of the previous Congresses (69th Congress, 1st Session, House Report 991, pp. 12-13, to accompany H. R. 11489; 68th Congress, 2nd Session, House Report 1292, pp. 14-15, to accompany H. R. 11796). His efforts during both sessions failed.

It would appear, therefore, that Representative Johnson, whose reputation as an expert on Immigration, and the laws that govern and control it, and the man to whom the Department of Labor turns when it desires to effect changes in the Immigration Laws, is of the opinion even today that Section 34 of the Act of 1917, was not affected by any part of the Act of 1924, and that it is still in full force and effect.

It is well to note the fact, now, that Mr. Johnson was the Chairman of the House Committee which conferred with the Senate Committee in the preparation of the bill which became the Immigration Act of 1924.

(a) Congress utilized in the Act of 1924 a certain definite method of repeal and modification.

The argument of the United States Attorney in the lower court was to the effect that Section 34 of the Immigration Act of 1917, was repealed by the Act of 1924.

The petitioner submits that there is nothing inconsistent in the Act of 1924 with the provisions of Section 34 of the Act of 1917 and that the later act neither actually nor in effect repealed or superseded the earlier act.

Section 25 of the Act of 1924 definitely sets forth the purposes of Congress in its enactment where it distinctly says:

> "The provisions of this act are in addition to and not in substitution for the provisions of the immigration laws, and shall be enforced as a part of such

> laws, and all the penal or other provisions of such laws, not inapplicable, shall apply to and be enforced in connection with the provisions of this act."

It would appear from a reading of the Act of 1924 that the framers utilized a particular method of changing, modifying or repealing sections of the Act of 1917. This method was by actual reference to specific sections to be amended or repealed.

This was done in the following instances:

> Act of 1924; Sect. 20, Subdiv. d: "Section 32 of the Act of 1917 is repealed * * *."
>
> Act of 1924; Sect. 26: "Section 9 of the immigration act of 1917 is amended to read as follows: '* * *'"
>
> Act of 1924; Sect. 27: "Section 10 of the immigration act of 1917 is amended to read as follows: '* * *'"

The logical conclusion to be drawn from the method used is that if Congress desired to repeal so important a provision as Section 34 of the Act of 1917, it would have followed a similar procedure and have done so by actual reference, as in the instances cited. This contention is further borne out by the terms of Section 25 of the Act, wherein attention is called to the fact, and the warning issued that

> "The provisions of this act are in addition to and not in substitution for the provisions of the immigration laws . . ."

(b) Section 34 of the Act of 1917 apparently applies only to alien seamen unlawfully in the United States.

It would appear from a study of the few cases on the point in question that most of the instances coming before the Court related to seamen who have stayed beyond the

time limit provided by the Immigration Rules, and that the Courts, therefore, have felt that they did not come within the limitation provided in Section 34, Act of 1917.

The language of the section is simple and unambiguous. It says in part:

> "That any alien seaman who shall land in a port of the United States contrary to the provisions of this act, shall be deemed to be unlawfully in the United States * * *"

and undoubtedly means what it says. It specifically and clearly sets forth the ways and means for the lawful entry of alien seamen, such as, for a limited period (to reship, visit, for medical attention, etc.) and then it goes on to say that a seaman landing for any other purpose "shall be deemed to be unlawfully in the United States".

The petitioner admits that he is "unlawfully in the United States" but he contends

> 1st. That he is an alien seaman.
>
> 2nd. That he was not taken into custody within three years after landing.
>
> 3rd. That as to him Section 34 of the Act of 1917 is a statute of limitations.
>
> 4th. That, therefore, the Commissioner of Immigration is prohibited from deporting him.

It would appear, also, that while there does not seem to be any decisions directly in point, the inference to be drawn from the opinions in cases somewhat analogous, is to the effect that the real test lies in the answer to the question of "whether the entry was lawful or unlawful", and if unlawful, then Section 34 protects the seaman from deportation.

In a recent case in this district, *Cellamare* vs. *Benj. M. Day*, 32 Fed. (2) 623, Judge Thacher said:

> "* * * The limitation contained in Section 34 of the Immigration Act of 1917 can have no application because in terms it applies only to alien seamen whose landing was contrary to the Act of 1917."

and in *Ex Parte Bildt*, 32 F. (2d) 894, it was said by the Court, after quoting Section 34, Act of 1917, as follows:

> "The difficulty of application arises out of the fact that the initial 'landing' of the appellant was not unlawful but pursuant to permission duly given by the immigration officials. But, if we assume its applicability during the sixty days covered by the permit the Immigration Service had no right to proceed against him. His 'landing' became unlawful only upon the termination of that period, and hence it must be held that the period prescribed by it did not commence to run until September 30, 1925, less than 3 years prior to his arrest for deportation."

The fair inference to be drawn from these two cases is that if the original entry had been unlawful, then the opinion and decision of the Court in both instances,—all other facts being equal,—would have been opposite to the actual decision, and the writs of habeas corpus in both instances would in all likelihood have been sustained.

(c) The construction placed on Section 34 of the Immigration Act of 1917 by the Department of Labor is entitled to great weight.

Where there is ambiguity in the meaning or application of a statute (*Cumberland Telephone and Telegraph Co.* vs. *City of Memphis*, 198 Fed. 955), as there apparently is in section 14 of the Act of 1924, the construction placed upon

it when it first went into operation, is the strongest evidence that it has been rightfully explained. The practical construction given to a doubtful statute by those whose duty it is to carry it into execution is entitled to great weight and will not be disregarded or overturned except for cogent reasons and unless it is clear that such construction is erroneous. (*First Nat'l Bank* vs. *U. S.*, 206 Fed. 374, 379, and authorities cited.)

In 1924, after the passage of the Immigration Act of that year, which said Act has not been amended or repealed since that date, the United States Department of Labor, Bureau of Immigration, having the duty to carry said law into execution, caused the "Immigration Laws" to be printed by the Government Printing Office at Washington, for the information and guidance of its own agents and the general public, and it included in the printing of the Act of 1917, Section 34, without change or comment, proving conclusively that it was the opinion of the immigration experts in that department that no part of the Act of 1924 changed or modified Section 34, Act of 1917, in any respect.

In 1927, when the Department of Labor again caused the Immigration Laws to be officially printed in book form, they again included Section 34 of the Act of 1917, without change or comment, and this was after they had had three years in which to study the application of the Act of 1924, and to observe its enforcement, effect, and judicial interpretation.

At that time, they even went so far as to include in the printed book of that year, the official publication of the department, the "Rules of March 1, 1927". Among said rules is quoted below, in part, Subdivision I, paragraph 1, of Rule 6, relating specifically to Section 34, Act of 1917,

containing the regulations and instructions covering the "arrest and deportation of alien seamen", as follows:

> "Any alien who shall come to a United States port as a seaman and land in the United States otherwise than in pursuance of and in accordance with the provisions of the Act of February 5, 1917, shall be arrested, as provided in Section 34 of said Act, whenever and wherever found in this country within three years from the date of landing."

As this rule is still in effect, it is apparent that the opinion of the experts on immigration in the Department of Labor in relation to the applicability of Section 34, Act of 1917, notwithstanding the provisions of Section 14, Act of 1924, in relation to alien seamen unlawfully entering the United States, and remaining for more than three years, remains unchanged.

It is also well to note that the Department of Labor, with each Congress, following 1924, has endeavored to have the Act of 1924 amended so as to specifically repeal Section 34 of the Act of 1917, but within success.

The petitioner believes, also, that those men, learned in the law, who have compiled in recent years the United States Code, United States Code Annotated, and the various Digests of Federal Laws, all of whom have without exception included Section 34, Act of 1917, as an inseparable part of the Immigration Laws of the United States, should be considered and respected. Their study of both Acts apparently lead them to believe that Section 34, Act of 1917, is still in full force and effect, and means exactly what its simple, understandable English says.

(d) The petitioner contends further that Section 34 of the Act of 1917 creates a special class in favor of seamen.

The unanimous Court in *Nagle* vs. *Hansen,* C. C. A., 9th Circuit, 17 Fed. (2) 557, dealing directly with this point, said:

> "The general provisions in the 1924 act that aliens, who have entered unlawfully or remained illegally at any time after entering the United States shall be taken into custody and deported, is inconsistent with the provisions of section 34 of the act of 1917, and would suggest a repeal of the latter by implication; unless section 34 may be said to create a special class, subject to special different treatment. And, considering it in the relation it bears to other provisions of the act of 1917, we think it does create a special limitation, in favor of seamen as a class, which is not repealed by the 1924 act. The act of 1917 contained a general provision (Sec. 19) governing the deportation of aliens, the provision common to those who entered while belonging to excluded classes being that they might be deported within five years after entry. That this provision, as it affects all aliens not within the admissible classes, was repealed by section 14 of the act of 1924 is clear enough. That repeal, however, in reason and relation, does not affect the special conditions separately expressed in section 34 of the 1917 law."

The petitioner, therefore, contends that, as Section 34 of the Act of 1917 has not been repealed and is still in effect, that he is entitled to the protection of the provisions thereof, and as deportation proceedings were not commenced within three years of the date of his landing, under the provisions of this act, they cannot be made effective as against him.

POINT III.

The law should not be left in its present state of confusion.

It is apparent, from the foregoing, that the law on this subject is in a hopeless and misleading state of confusion. We believe that it is unfair and unjust to litigants, to the attorneys practicing before the Federal Bench, to the Immigration service, and to students, to permit this situation to continue any longer, when an adjudication by this Court will forever settle the question.

We believe that this subject is of sufficient importance to warrant the consideration of this Court.

Respectfully submitted,

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